

The Office accepted that on March 8, 2003 appellant, then a 43-year-old mail processing clerk, sustained tendinitis, an effusion of the left shoulder and an aggravation of preexisting post-traumatic stress disorder when her supervisor grabbed her arm, and pushed it forcefully. Her supervisor yelled at her repeatedly in front of her coworkers over a period of several minutes.

Appellant stopped work on March 11, 2003 and did not return. She received compensation for total disability on daily rolls beginning April 25, 2003 and on the periodic rolls beginning July 10, 2004.

Dr. Thomas Wolman, an attending Board-certified psychiatrist, submitted periodic reports through June 2003 opining that appellant remained totally disabled for work due to post-traumatic stress syndrome. He noted that, prior to the March 8, 2003 incident, appellant was receiving psychiatric treatment for post-traumatic stress syndrome related to incidents during her military service. Dr. Wolman submitted reports through November 12, 2003 finding that appellant was totally disabled for work due to post-traumatic stress disorder aggravated by the March 8, 2003 injury.¹

On July 14, 2003 the Office referred appellant to Dr. Harry A. Doyle, a Board-certified psychiatrist and neurologist, for a second opinion examination. In an August 5, 2003 report, Dr. Doyle found appellant totally disabled for work from March 8, 2003 onward due to post-traumatic stress disorder. In a November 17, 2003 supplemental report, Dr. Doyle opined that the accepted aggravation of post-traumatic stress disorder had ceased. He stated that appellant could return to work at another employing establishment facility.

Dr. Wolman submitted periodic reports through April 7, 2004 finding appellant totally disabled for work due to post-traumatic stress disorder and depression aggravated by the March 8, 2003 injury.² In a June 21, 2004 letter, he stated that appellant received bi-weekly psychotherapy and monthly medication management for post-traumatic stress disorder and major depression. Dr. Wolman opined that appellant was totally disabled for work due to the severity of her symptoms. He reiterated this opinion in reports through July 16, 2004.

The Office found a conflict of medical opinion arose between Dr. Wolman, for appellant, and Dr. Doyle, for the government. On August 19, 2004 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Stephen Padnes, a Board-certified psychiatrist and neurologist, for an impartial medical examination. In an April 17, 2005 report, Dr. Padnes noted results of his two psychiatric examinations of appellant performed on or about September 30, 2004. He opined that appellant continued to have “mild residual symptoms” of the March 8, 2003 injury, “consisting primarily of ‘fear of retaliation’ from her original supervisor and his ‘associates.’” Dr. Padnes found appellant capable of working at a different employing establishment facility under a female supervisor. He specified that, if appellant returned to work at an employing establishment facility, “such exposure should be gradual, *i.e.*; through initial part-time employment proceeding as quickly as possible to full-time work with ongoing therapeutic support of such activity.” Dr. Padnes reiterated that, although appellant could be gainfully reemployed now, he suggested part-time work to begin with.

¹ Dr. John Walsh, an attending osteopath, noted in a July 24, 2003 report that appellant’s left shoulder injury had largely resolved following physical therapy.

² On April 29, 2004 the employing establishment offered appellant a mail processing position at the employing establishment’s Schuylkill station. Appellant rejected the offer on June 15, 2004 as she had “not been released for work from [her] doctor.”

On August 18, 2005 the employing establishment offered appellant a full-time mail processing clerk position at the employing establishment's Philadelphia automated mail center. Appellant's schedule would be 40 hours a week, 8½ hours a day. The position required "feeding, sweeping, loading trays into containers." The position would begin on September 3, 2005.

In an October 4, 2005 letter, appellant refused the position, contending that she remained totally disabled due to the March 8, 2003 injuries.

In an October 14, 2005 letter, the Office advised appellant that the offered modified mailing requirements clerk position was suitable work within her medical restrictions. The Office afforded appellant 30 days in which to either accept the position or provide good cause for refusal. The Office also advised appellant that, under section 8106(c) of the Federal Employees' Compensation Act, she would lose her entitlement to monetary compensation if she refused suitable work.

In a December 15, 2005 letter, the Office advised appellant that the offered position was still found to be suitable work and remained available. It afforded appellant 15 days to accept the position or incur the termination of her compensation benefits. The Office stated that no further reasons for refusal would be considered. Appellant then submitted an October 6, 2005 letter from Dr. Wolman finding that her symptoms prevented "her from being able to work full time or part time."

In a February 1, 2006 email, the Office noted that the employing establishment confirmed that appellant had not returned to duty.³

By decision dated May 8, 2006, the Office terminated appellant's entitlement to monetary compensation benefits effective May 14, 2006 under section 8106(c) of the Act on the grounds that she refused an offer of suitable work. The Office found that the weight of the medical evidence rested with Dr. Padnes, who opined that appellant could return to regular duty at a different employing establishment facility. The Office further found that the offered mail processing clerk position was "in keeping with the restrictions of Dr. Padnes."

In a June 6, 2006 letter, appellant requested reconsideration and submitted additional evidence. In a May 30, 2006 letter, Dr. Wolman explained that appellant's work-related post-traumatic stress disorder caused intrusive thoughts, fatigue and inability to concentrate. These symptoms prevented appellant from following "even short, simple instructions." Also, she was irritable and unable to form relationships, preventing her from interacting appropriately with the public, supervisors or coworkers. Also, appellant's symptoms prevented her from responding appropriately to work pressures. Dr. Wolman opined that appellant's work-related post-

³ In an April 12, 2006 letter, the Office referred appellant back to Dr. Padnes for an updated psychiatric report. In a May 1, 2006 email, the Office noted that Dr. Padnes wanted \$2,000.00 for the reevaluation. In a May 2, 2006 email, it was noted that Dr. Padnes would have to justify his request for so large a fee. Also, Dr. Padnes had requested a \$9,000.00 fee for his first examinations of appellant. In a May 4, 2006 email, the Office recommended that the next step should be terminating appellant's compensation and not a referral back to Dr. Padnes.

traumatic stress disorder was completely disabling. He stated that she could not, under any circumstances, maintain substantial gainful employment.

By decision dated August 28, 2006, the Office denied modification of the May 8, 2006 decision. The Office found that appellant's June 6, 2006 letter and Dr. Wolman's May 30, 2006 letter did not establish that the offered modified clerk position was not suitable work. The Office found that the weight of the medical evidence continued to rest with Dr. Padnes and that the offered position was suitable to the work capabilities he defined.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ In this case, the Office terminated appellant's compensation under section 8106(c)(2) of the Act, which provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee is not entitled to compensation."⁵ To justify termination of compensation, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.⁶ Section 8106(c) will be narrowly construed as it serves as a penalty provision, which may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.⁷

Section 10.517(a) of the Act's implementing regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured by the employee, has the burden of showing that such refusal or failure to work was reasonable or justified.⁸ Pursuant to section 10.516, the employee shall be provided with the opportunity to make such a showing before a determination is made with respect to termination of entitlement to compensation.⁹ The issue of whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by medical evidence.¹⁰

ANALYSIS

The Office accepted that, on March 8, 2003, appellant sustained a left shoulder injury and an aggravation of post-traumatic stress disorder. She received total disability compensation beginning April 25, 2003. Following development of the evidence, the Office obtained an

⁴ *Linda D. Guerrero*, 54 ECAB 556 (2003); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ 5 U.S.C. § 8106(c)(2); *see also Geraldine Foster*, 54 ECAB 435 (2003).

⁶ *Ronald M. Jones*, 52 ECAB 190 (2000); *Arthur C. Reck*, 47 ECAB 339, 341-42 (1995).

⁷ *Joan F. Burke*, 54 ECAB 406 (2003); *see Robert Dickerson*, 46 ECAB 1002 (1995).

⁸ 20 C.F.R. § 10.517(a); *see Ronald M. Jones*, *supra* note 6.

⁹ 20 C.F.R. § 10.516.

¹⁰ *Kathy E. Murray*, 55 ECAB 288 (2004); *Anna M. Delaney*, 53 ECAB 384 (2002).

April 17, 2005 impartial medical opinion from Dr. Padnes, a Board-certified psychiatrist, who opined that appellant could return to work at a different employing establishment facility. Dr. Padnes instructed that, due to the residuals of appellant's post-traumatic stress disorder, she should return to work gradually, "through initial part-time employment." He emphasized that, although appellant was then capable of "gainful reemploy[ment]," she should perform "part-time work to begin with."

On August 18, 2005 the employing establishment offered appellant a full-time mail processing position at an employing establishment facility. The proposed schedule was 40 hours a week, 8½ hours a day. There were no indications that appellant would start work on a part-time basis as Dr. Padnes prescribed. Yet, the Office advised appellant in October 14 and December 15, 2005 letters that the offered position was suitable work within the restrictions given by Dr. Padnes.

The Board finds that the offered modified clerk position was not suitable work. Dr. Padnes found appellant capable of only part-time work at the beginning of her reemployment. The offered position was full time, not conforming to the restrictions imposed by the impartial medical examiner. The Office erred in finding that the offered position was suitable work as it was beyond appellant's medical capabilities.¹¹ Therefore, the Office's May 8, 2006 decision terminating appellant's monetary compensation benefits and the August 28, 2006 affirmation of that decision must be reversed. The case will be returned to the Office for prompt payment of all compensation due and owing following the May 14, 2006 termination.

CONCLUSION

The Board finds that the Office improperly terminated appellant's monetary compensation benefits effective May 14, 2006 under section 8106(c) of the Act on the grounds that she refused an offer of suitable work. The offered position was not within the medical restrictions set forth by the impartial medical examiner.

¹¹ *Anna M. Delaney, supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 28 and May 8, 2006 are reversed.

Issued: May 15, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board